

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,	)	
PLATINUM MOTORS, INC.,	)	
MATTINGLY AUTO SALES, INC.,	)	
YOUNG EXECUTIVE MANAGEMENT &	)	
CONSULTING SERVICES, INC.,	)	
Individually, and on behalf	)	
of other members of the	)	
general public similarly	)	
situated,	)	
Plaintiffs,	)	
	)	Docket No.
-v-	)	1:14-cv-01589-TWP-DKL
	)	
COX ENTERPRISES, INC.,	)	Class Action
COX AUTOMOTIVE, INC.,	)	
NEXTGEAR CAPITAL, INC. f/k/a	)	
DEALER SERVICES CORPORATION,	)	
successor by merger with	)	
Manheim Automotive Financial	)	
Services, Inc., and JOHN WICK,	)	
Defendants.	)	

The deposition upon oral examination of **STUART LABAUVE**, a witness produced and sworn before me, Tami L. Scott, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Plaintiffs at the offices of Bose, McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, Marion County, Indiana, on November 9, 2016, at 9:00 a.m., pursuant to the Federal Rules of Civil Procedure.

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EXAMINATION BY MR. COMAN

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1           approved, this was not something that you would  
2           negotiate with the customer; correct?

3       A     We could discuss terms.

4       Q     Right. And the terms being, what, the 60/30/30  
5           terms?

6       A     Depends on what they were interested in would fit  
7           for their business model that they told us about.

8       Q     Right. You wouldn't -- I'm sorry -- on like  
9           Exhibit 3 and Exhibit 2, they wouldn't have -- the  
10          customer dealer wouldn't have the option to go, you  
11          know what, I want to change this definition to  
12          advance, or I want to change that definition;  
13          correct?

14      A     Yes, sir.

15      Q     This was a take it or leave it; correct?

16      A     Yes, sir.

17      Q     The only options they would have would be what --  
18          the Term Sheet numbers; correct?

19      A     Yes, sir.

20      Q     And what options were those, again?

21      A     We had different options of terms we could do.

22          Depends on the line of credit they were applying  
23          for.

24      Q     If I was a customer dealer back in 2007, could I say  
25          Stuart, 2 percent, that's what I'm willing to pay.

1 Did he have that option?

2 A If his credit was strong enough and if there was --  
3 on the terms, yes, we could negotiate some of that  
4 stuff.

5 Q Did you often negotiate interest rates?

6 A We could if we needed to.

7 Q How many times have you changed an interest rate?

8 A I couldn't give you an exact number.

9 Q Less than five?

10 A It was more than that.

11 Q Less than ten?

12 A More than that.

13 Q How many?

14 A I don't know. We've talked to the number we did  
15 before. I don't know how many, you know, sales that  
16 I've done, and I don't know how many contract  
17 terms -- I can't tell you all the terms because in  
18 the middle of contracts, we can change terms as  
19 well.

20 Q The records would show whatever they are; correct?

21 A Yes, sir.

22 Q But as far as the contract itself, the customer  
23 didn't have the option of altering in any fashion?

24 A No, sir.

25 Q Correct?



1 Q When DSC, and if DSC pays the auction later, they're  
2 charging interest and fees on money they're not  
3 lending; correct?

4 MR. VINK: Object to the form of the question.

5 Q You can answer.

6 A We are obligated to pay for that unit and we are  
7 responsible for that unit if anything was to happen  
8 to it, so we are on the hook for that unit when it's  
9 on the floorplan.

10 Q Floorplan date goes first; correct?

11 A Yes, sir.

12 Q DSC and NextGear pays auction later; correct?

13 A Yes, sir.

14 Q Not the same date; correct?

15 A Sometimes it might be. I don't know the --

16 Q But sometimes it's not?

17 A It depends on the circumstance.

18 Q Correct. DSC and NextGear is charging interest on  
19 money it's not lending; correct?

20 MR. VINK: Object to the form of the question.

21 It's the exact same question he just answered.

22 Q You can answer.

23 MR. VINK: You don't need to answer it again  
24 unless you have something to change from your  
25 previous answer.

1 Q Take a look at page 14, if you keep flipping. Do  
2 you see second from the bottom, that section of  
3 transactions that start with the 1997 Ford Explorer?

4 A On page 14?

5 Q Yes, sir.

6 A Yes, sir.

7 Q Okay. Do you see the Flooring Date, or I'm sorry,  
8 the Unit Purchased Date?

9 A Yes, sir.

10 Q Is what?

11 A 8/17/2012.

12 Q I'm looking at the 1997 Ford Explorer.

13 A Oh, I'm looking at an '02.

14 Q Okay. 1997, Stock Number 58.

15 A We're on different pages.

16 Q Okay. NGR14.

17 A Yes, sir. '97 Ford Explorer XLT.

18 Q Stock Number 58; is that correct?

19 A Yes, sir.

20 Q What is the Unit Purchase Date?

21 A August 26, 2011.

22 Q That's from an auction?

23 A Oak View Auto Auction.

24 Q Red Barn buys it at Oak View; correct?

25 A Yes, sir.